

**UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF TENNESSEE  
NASHVILLE DIVISION**

<b>UNITED STATES OF AMERICA,</b>	)	
	)	
<b>Plaintiff,</b>	)	
	)	
<b>v.</b>	)	<b>No. 3:17-cr-00104-8</b>
	)	
<b>AUTUMN SWINDLE,</b>	)	
	)	
<b>Defendant.</b>	)	

**MEMORANDUM OPINION**

Autumn Swindle has chronic hepatitis C, and her height and weight calculate to a body mass index (“BMI”) that qualifies her as obese.<sup>1</sup> (Doc. No. 534 at 17, 21, 27.) She moves for compassionate release based on the risk for serious complications from COVID-19 due to these conditions. (Doc. No. 531 at 1 and 3.) The Government opposes her motion because she receives appropriate care from the Bureau of Prisons. (Doc. No. 532 at 10–11.) Ms. Swindle’s assertion that she has exhausted available administrative remedies is not disputed. (Doc. No. 526 and 532). After review, the Court will deny her request for the reasons that follow.

Compassionate release may be granted for a “serious physical or medical condition” that substantially diminishes Ms. Swindle’s ability to provide self-care. U.S.S.G. § 1B1.13 n.1(A)(ii); see 18 U.S.C. § 3582(c)(1)(A). Conditions that significantly increase the defendant’s risk of severe illness from COVID-19 may qualify as “serious.” Being obese and a former cigarette smoker both increase a person’s risk of severe illness from COVID-19. Ctrs. for Disease Control and

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<sup>1</sup> She is 5’ 4” tall. (Presentence Report at 3.) She weighed 230 pounds in January 2020. (Doc. No. 534 at 21.) Entering those inputs into a standard adult BMI calculator returns a BMI of 39.5, which is in the “obese” category. Ctrs. for Disease Control and Prevention, Adult BMI Calculator, [https://www.cdc.gov/healthyweight/assessing/bmi/adult\\_bmi/english\\_bmi\\_calculator/bmi\\_calculator.html](https://www.cdc.gov/healthyweight/assessing/bmi/adult_bmi/english_bmi_calculator/bmi_calculator.html) (last visited Nov. 5, 2020).

Prevention, People with Certain Medical Conditions, (updated Nov. 2, 2020) <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-with-medical-conditions.html>. Compassionate release on this basis requires more. United States v. Jepsen, 451 F. Supp. 3d 242, 246 (D. Conn. 2020); Cannon v. United States, No. CR 11-048-CG-M, 2019 WL 5580233, at \*3 (S.D. Ala. Oct. 29, 2019).

While her two conditions may meet the threshold showing that Ms. Swindle has medical conditions that are serious in light of the risk to COVID-19, “under [§] 1B1.13, the Court must perform an individualized assessment, as an individual defendant’s relative risk varies widely.” United States v. Asmar, \_\_\_ F. Supp. 3d \_\_\_, 2020 WL 4569560, at \*3 (E.D. Mich. Aug. 7, 2020) (denying compassionate release to defendant who was obese and formerly smoked). Ms. Swindle’s risk is mitigated by her age—she is 42 years old, and there is no medical documentation of any other severe medical condition, especially her obesity. United States v. Tranter, \_\_\_ F. Supp. 3d \_\_\_, 2020 WL 3841268, at \*3 (N.D. Ind. July 8, 2020) (denying compassionate release to obese former smoker). There is no indication in the medical records that her chronic hepatitis C requires any treatment. Her medical conditions, in isolation or combination, are not a serious physical or medical condition that inhibit her ability to self-care in prison.

Accordingly, her Motion for Compassionate Release (Doc. No. 531) will be denied.

An appropriate order will enter.

  
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WAVERLY D. CRENSHAW, JR.  
CHIEF UNITED STATES DISTRICT JUDGE